

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-217014.2**DATE:** January 28, 1985**MATTER OF:** Quality Inn - Reconsideration**DIGEST:**

Request for reconsideration of a decision dismissing protest on the ground that protester did not show that fraud or bad faith was involved in the Small Business Administration denial of a certificate of competency is again dismissed as protester still has not produced evidence of fraud or bad faith.

Quality Inn requests reconsideration of our decision in Quality Inn, B-217014, Nov. 26, 1984, 84-2 C.P.D. ¶ 567, in which we dismissed Quality Inn's protest. We dismissed the protest on the ground that our Office will not review the Small Business Administration's (SBA) denial of a certificate of competency to Quality Inn absent a prima facie showing of fraud or such willful disregard of facts as to imply bad faith. Quality Inn had produced no evidence to make such a showing.

Quality Inn requests that we reconsider our decision dismissing its protest, but it still does not produce any evidence of fraud or bad faith. Rather, Quality Inn states that it has submitted a Freedom of Information Act (FOIA) request to SBA which Quality Inn expects will produce such evidence.

A protester has the burden of affirmatively proving its case. T.M. Systems, Inc., B-214543.2, Sept. 18, 1984, 84-2 C.P.D. ¶ 313. Here, Quality Inn has made no showing of fraud or bad faith, but merely alleges it will in the future produce such information. Since, as Quality Inn admits, there is no evidence before us to sustain its protest, we again dismiss the protest.

We note, however, that a protest based entirely on materials received pursuant to an FOIA request will be considered timely if filed within 10 days of the protester's receipt of information upon which its protest is founded and the protester diligently pursued the release of information

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under the FOIA. Carrier Corporation, B-214331, Aug. 20, 1984, 84-2 C.P.D. ¶ 197. Accordingly, Quality Inn may refile its protest at a later date if it obtains information based on its FOIA request to meet the above-stated review standard.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel